

## PROFESSIONAL CLIENT AGREEMENT

*This client agreement, together with any Schedule(s), and accompanying documents (including the cover letter and the relevant Product Disclosure Modules, as amended from time to time) (this "Agreement") sets out the terms of the contract between you and us. It is, therefore, very much in your interests to read it carefully. Please let us know as soon as possible if there is anything which you do not understand.*

### MODULE A - INTRODUCTION

#### 1. GENERAL INFORMATION

- 1.1 **Information about:** We, Berkeley Futures Limited, are authorised and regulated by the Financial Conduct Authority ("FCA"). Our principal place of business is 18 Savile Row, London, W1S 3PW. The FCA's registered office is 25 The North Colonnade, London, E14 5HS.
- 1.2 **Communication with us:** You may communicate with us in writing (including fax), by email or other electronic means, or orally (including by telephone). The language of communication shall be English, and you will receive documents and other information from us in English. Our website at [www.bfl.co.uk](http://www.bfl.co.uk) contains further details about us and our services, and other information relevant to this Agreement.
- 1.3 **Capacity:** We act as principal and not as agent on your behalf. We shall treat you as a professional client for the purposes of the FCA Rules. You have the right to request a different client categorisation. If you request categorisation as an eligible counterparty and we agree to such categorisation, we would no longer be required by regulatory rules to provide certain protections granted to professional clients. However, notwithstanding the absence of applicable regulatory rules, we would endeavour to provide a service which is overall effective and commercially reasonable. The regulatory protections concerned include formal requirements in the following areas: (a) to act in accordance with your best interests; (b) to provide certain information to you before providing services; (c) not to give or receive inducements; (d) to achieve best execution in respect of your orders; (e) to execute orders subject to other constraints as regards timing and handling relative to other clients' orders; (f) to ensure that information we provide is fair, clear and not misleading; and (g) to provide certain reports, confirmations and statements. If you request to be categorised as a retail client thereby requiring a higher level of regulatory protection we may not be able to provide our services to you. You agree and acknowledge that you are responsible for keeping us informed about any change that could affect your categorisation as a professional client. You act as principal and not as agent (or trustee) on behalf of someone else.
- 1.4 **Commencement:** This Agreement supersedes any previous agreement between you and us on the same subject matter. This Agreement shall apply to all Transactions contemplated under this Agreement.
- 1.5 **Subject to Applicable Regulations:** This Agreement and all Transactions are subject to Applicable Regulations so that: (i) if there is any conflict between this Agreement and any Applicable Regulations, the latter will prevail; (ii) nothing in this Agreement

shall exclude or restrict any obligation which we have to you under Applicable Regulations; (iii) we may take or omit to take any action we consider necessary to ensure compliance with any Applicable Regulations; (iv) all Applicable Regulations and whatever we do or fail to do in order to comply with them will be binding on you; and (v) such actions that we take or fail to take for the purpose of compliance with any Applicable Regulations shall not render us or any of our directors, officers, employees or agents liable.

- 1.6 **Market action:** If a Market (or intermediate broker or agent, acting at the direction of, or as a result of action taken by, a Market) or regulatory body takes any action which affects a Transaction, or becomes insolvent or is suspended from operating, then we may take any action which we, in our reasonable discretion, consider desirable to correspond with such action or event or to mitigate any loss incurred as a result of such action or event. Any such action shall be binding on you. If a Market or regulatory body makes an enquiry in respect of any of your Transactions, you agree to co-operate with us and to promptly supply information requested in connection with the enquiry and you agree to share any such information with our group companies and/or with regulatory bodies.
- 1.7 **Scope of this Agreement:** This Agreement sets out the basis on which we will provide services to you. This Agreement governs each Transaction entered into or outstanding between us on or after the execution of this Agreement. Subject to Applicable Regulations and this Agreement there shall be no restrictions on the Transactions in respect of which we may advise you or deal with you.
- 1.8 **Charges:** You shall pay our charges as agreed with you from time to time; any taxes imposed by any competent authority on any account opened or Transaction effected by or cleared for you; any fees or other charges imposed by a Market or any clearing organisation; interest on any amount due to us at the rates then charged by us (and which are available on request); any fines imposed by any competent authority where attributable to your conduct; and any other value added or other applicable taxes of any of the foregoing, including any withholding tax. We reserve the right to charge an account maintenance fee in relation to inactive accounts in respect of which we have not received any instructions from you or on your behalf for at least 1 year. Such fee will be notified to you at your last known address and may be deducted from any money held by us on your behalf or due to you from us. In the event that insufficient funds are available, you agree that we may in such manner and at such time or times as we in our sole discretion see fit, liquidate any Custody Assets, as we in our sole discretion may select, that we hold for you in order to deduct the amount of the maintenance fee from the proceeds.
- 1.9 **Additional costs:** You should be aware of the possibility that other taxes or costs may exist that are not paid through or imposed by us.
- 1.10 **Payments:** All payments to us under this Agreement shall be made in same day funds in such currency as we may from time to time specify to the bank account designated by us for such purposes. All such payments shall be made by you without any deduction or withholding.
- 1.11 **Base Currency:** For the purposes of any calculation hereunder, we may convert amounts denominated in any currency into such other currency as we may from time

to time specify, at such rate prevailing at the time of the calculation as we shall reasonably select.

- 1.12 **Remuneration and sharing of charges:** We may receive remuneration from, or share charges with, an Associate or other third party in connection with Transactions carried out on your behalf. Details of such remuneration or sharing arrangements are enclosed.
- 1.13 **Description of Service:** A description of the main characteristics of the service we will provide is enclosed.
- 1.14 **Language:** This Agreement is supplied to you in English and we will continue to communicate with you in English for the duration of this Agreement.
- 1.15 **Conflicts:** In the event of any conflict between the terms of this Agreement and our website this Agreement will prevail. In the event of any conflict between the terms of this Agreement and the terms of other documentation that has been signed between you and us, the terms of this Agreement shall prevail.

## 2. RIGHT TO CANCEL

- 2.1 **Right to Cancel:** You should note that you are not entitled to cancel this Agreement (but you can terminate it as set out in the Termination clause).

## MODULE B - ADVICE

### 3. ADVICE

- 3.1 **Information from you:** We are obliged under Applicable Regulations to obtain information about your personal and financial circumstances so that we can make a recommendation or take a decision which is suitable for you.
- 3.2 **Accuracy of Information:** We shall assume that information about your personal and financial circumstances, knowledge and experience provided from you to us or provided by another firm through which we receive an instruction to perform a service for you, is accurate and we will have no responsibility to you if such information changes or becomes inaccurate unless you have informed us of such changes. Unless we obtain the necessary information from you, we will not be able to advise you.
- 3.3 **Advice and execution-only arrangements:** Please note that we will not advise you about the merits of a particular Transaction if we reasonably believe that, at the time of your order, you are not expecting such advice and are dealing on an execution-only basis. If we advise you that your proposed course of action is not suitable for you but you nevertheless wish to proceed with the Transaction, we will only accept your order on an execution-only basis. In such circumstances, we will inform you at the time that we will execute your order on that basis. We may proceed with the Transaction even when you are acting contrary to our advice.
- 3.4 **Execution only business:** If you ask us to enter into a Transaction in respect of shares, bonds, authorised asset trust units or certain other non-complex financial instruments, we are not required to assess the suitability of the instrument or service provided or

offered, and you will not benefit from the protection of Applicable Regulations on assessing suitability.

- 3.5 ***No on-going advice:*** From time to time, we may, at our discretion, provide information, advice and recommendations on our own initiative. However, we shall not be under any obligation to provide on-going advice in relation to the management of your investments unless you have entered into a discretionary investment management agreement with us or we have agreed to maintain your portfolio under continuous review and provide specific recommendations from time to time.
- 3.6 ***Limitations:*** Where we do provide market information, advice or recommendations, we give no representation, warranty or guarantee as to their accuracy or completeness or as to the tax consequences of any Transaction. Unless we specifically agree otherwise in writing with you, you hereby acknowledge: (i) that the provision of advice is incidental to your dealing relationship with us and provided solely to enable you to make your own investment decisions; (ii) that the information provided to other clients may be different from advice given to you; and (iii) that such information may not be consistent with our proprietary investments, or those of our Associates, directors, employees or agents.
- 3.7 ***Investment research and other published information:*** We may from time to time send published research reports and recommendations and other publications to you. If the document contains a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, you agree that you will not pass it on to any such person or category of persons. We make no representations as to the time of receipt by you of research reports or recommendations and cannot guarantee that you will receive such research reports or recommendations at the same time as other clients. We shall not be liable for any investment decision you make, based in whole or in part, on any investment research report, recommendation or other publication we send to you. Any such published research reports or recommendations may appear in one or more screen information service. Please refer to our Conflicts of Interest Policy for further information on how we manage conflicts which would affect the impartiality of investment research we provide to you.
- 3.8 ***Ancillary advice:*** We will not provide any advice other than as provided for in this Agreement and in line with any Applicable Regulations. For the avoidance of doubt, we will not provide any tax or accounting advice and, we shall not at any time be deemed to be under any duty to provide tax or accounting advice.

## **MODULE C - OUR RELATIONSHIP WITH YOU**

### **4. YOUR INFORMATION**

- 4.1 ***Confidentiality:*** We will treat all information we hold about you or your account or Transactions as confidential, even when you are no longer a client. You agree, however, that we may disclose this information to other companies in our group and that we and they may disclose it to those who provide services to us or act as our agents; to anyone to whom we transfer or propose to transfer any of our rights or duties under this Agreement; to credit reference agencies or other organisations that help us and others make credit decisions and reduce the incidence of fraud or in the course of carrying out identity, fraud prevention or credit control checks; to regulators

and governmental agencies, in any jurisdiction, where we are required to do so by Applicable Regulations, where there is a public duty to disclose or where our interests require disclosure; at your request; or with your consent. In the case of a joint account, we may also disclose to any of you information obtained by us from any of you in relation to the account or your Transactions.

- 4.2 **Data protection:** Before providing us with any information relating to identifiable living individuals in connection with this Agreement you should ensure that those individuals are aware of: our identity; that we may use their information to administer and operate your account; that this may involve disclosure of their information as discussed in clause 4.1 above and transfer of their information to any country, including countries outside the European Economic Area which may not have strong data protection laws; and that they have rights of access to, and correction of, their information which they may exercise by contacting us in writing.
- 4.3 **Your rights:** You may have rights of access to some or all of the information we hold about you, to have inaccurate information corrected and to tell us that you do not wish to receive marketing information, under data protection law. If you wish to exercise any of these rights, please contact us in writing.

## MODULE D - ORDER PLACEMENT

### 5. INSTRUCTIONS AND BASIS OF DEALING

- 5.1 **Authority and Authorised Persons:** You shall provide us with a list of the officers, employees or agents who are authorised, either alone or with others, to act on your behalf in the giving of instructions and performance of any other acts, discretions or duties under this Agreement ("**Authorised Person(s)**") together with specimens of their signatures if written instructions are to be given. We shall be entitled to rely upon the continued authority of an Authorised Person for those purposes until we receive notice from you to the contrary. Any communications purporting to limit your or such Authorised Person's authority (such as, for example, authorised signatories lists) will not be accepted and will not be binding on us.
- 5.2 **Cancellation/withdrawal of instructions:** We can only cancel your instructions if we have not acted upon those instructions. Instructions may only be withdrawn or amended by you with our consent.
- 5.3 **Right not to accept orders:** We may, but shall not be obliged to, accept instructions to enter into a Transaction. If we decline to enter into a proposed Transaction, we shall not be obliged to give a reason but we shall promptly notify you accordingly.
- 5.4 **Control of orders prior to execution:** We have the right (but no obligation) to set limits and/or parameters to control your ability to place orders at our absolute discretion. Such limits and/or parameters may be amended, increased, decreased, removed or added to by us at our absolute discretion and may include (without limitation): (i) controls over maximum order amounts and maximum order sizes; (ii) controls over our total exposure to you; (iii) controls over prices at which orders may be submitted (to include (without limitation) controls over orders which are at a price which differs greatly from the market price at the time the order is submitted to the order book); (iv) controls over the Electronic Services (to include (without limitation)

any verification procedures to ensure that any particular order or orders has come from you); or (v) any other limits, parameters or controls which we may be required to implement in accordance with Applicable Regulations.

- 5.5 **Execution of orders:** We shall use our reasonable endeavours to execute any order promptly, but in accepting your orders we do not represent or warrant that it will be possible to execute such order or that execution will be possible according to your instructions. We shall carry out an order on your behalf only when the relevant Market is open for dealings, and we shall deal with any instructions received outside Market hours as soon as possible when that relevant Market is next open for business (in accordance with the rules of that Market). You agree that we may execute an order on your behalf outside a Market. When you give us a specific instruction, our order execution policy will not apply. You confirm that you have read and agree to our order execution policy. We will notify you of any material changes to our order execution policy, but it is your responsibility to check for any other changes to our order execution policy as published from time to time at [www.bfl.co.uk](http://www.bfl.co.uk). We will consider the continued placement of orders by you to constitute your continued consent to our order execution policy as in effect from time to time.
- 5.6 **Crossing of orders:** We may arrange for a Transaction to be executed, either in whole or in part, by selling an investment to you from another client, or a client of an Associate of ours, or vice-versa. We shall not give you prior notice if we arrange for a Transaction to be executed in this manner.
- 5.7 **Aggregation of orders:** We may combine your order with our own orders and orders of other clients. By combining your orders with those of other clients we must reasonably believe that this is in the overall best interests of our clients. However, aggregation may result in you obtaining a less favourable price in relation to a particular order. Please refer to our order allocation policy on our website at [www.bfl.co.uk](http://www.bfl.co.uk) for more information.
- 5.8 **Confirmations:** We shall send you confirmations at the end of the trading day for any Transactions that we have executed on your behalf on that trading day, by electronic mail to the e-mail address on record for you. It is your responsibility to inform us of any change to your e-mail address, the non-receipt of a confirmation, or whether any confirmations are incorrect before settlement. Confirmations shall, in the absence of manifest error, be conclusive and binding on you, unless we receive from you objection in writing within two Business Days of despatch to you or we notify you of an error in the confirmation within the same period.
- 5.9 **Performance and settlement:** You may promptly deliver any instructions, money, documents or property deliverable by you under a Transaction in accordance with that Transaction as modified by any instructions given by us for the purpose of enabling us to perform our obligations under the relevant matching Transaction on a Market or with an intermediate broker. We may also, at our discretion, take actions to facilitate the performance of a Transaction where you have been unable to do so (for example, to enable 'buy in' before an applicable deadline).
- 5.10 **Intermediate brokers and other agents:** We may, at our entire discretion, arrange for any Transaction to be effected with or through the agency of an intermediate broker, who may be an Associate of ours, and may not be in the United Kingdom. Neither we

nor our respective directors, officers, employees or agents will be liable to you for any act or omission of an intermediate broker or agent. No responsibility will be accepted for intermediate brokers or agents selected by you.

- 5.11 **Position limits:** Position limits may be imposed by a Market and we may require you to limit the number of open positions which you may have with us at any time and we may in our sole discretion close out any one or more Transactions in order to ensure that such position limits are maintained.
- 5.12 **Regulatory Reporting:** Under Applicable Regulations, we may be obliged to make information about certain Transactions public. You agree and acknowledge that any and all proprietary rights in such Transaction information are owned by us and you waive any duty of confidentiality attaching to the information which we reasonably disclose.

## MODULE E - ELECTRONIC TRADING TERMS

### 6. ELECTRONIC TRADING TERMS

- 6.1 **Scope:** These clauses apply to your use of any Electronic Services.
- 6.2 **Access:** Once you have gone through the security procedures associated with an Electronic Service provided by us, you will get access to such service, unless agreed otherwise or stated on our website. Our Electronic Services will normally be available between 11.00 a.m. and 10.15 p.m. London time on Business Days. We may change our security procedures at any time and we will tell you of any new procedures that apply to you as soon as possible.
- 6.3 **Restrictions on services provided:** There may be restrictions on the number of Transactions that you can enter into on any one day and also in terms of the total value of those Transactions when using an Electronic Service. You acknowledge that some Markets place restrictions on the types of orders that can be directly transmitted to their electronic trading systems and the transmission of such orders to the Market is dependent upon the accurate and timely receipt of prices or quotes from the relevant Market or market data provider. You acknowledge that a Market may cancel such an order when upgrading its systems, trading screens may drop the record of such an order, and you enter such orders at your own risk.
- 6.4 **Right Of Access:** In respect of any Market to which we allow you to receive information or data using the Electronic Services, we may at any time or times, on reasonable notice (which, in certain circumstances, may be immediate) enter (or to instruct our or the Market's subcontractors to enter) your (or, in a co-hosting situation, third parties') premises and/or servers and inspect your (or, in a co-hosting situation, third parties') System to ensure that it complies with the requirements notified by us to you from time to time and that you are using the Electronic Services in accordance with this Agreement and any requirements of any relevant Market or Applicable Regulations.
- 6.5 **Access requirements:** You will be responsible for providing the System to enable you to use an Electronic Service.

- 6.6 **Virus detection:** You will be responsible for the installation and proper use of any virus detection/scanning program we require from time to time.
- 6.7 **Maintaining standards:** When using an Electronic Service you must:
- (a) ensure that your System is maintained in good order and is suitable for use with such Electronic Service;
  - (b) run such tests and provide such information to us as we shall reasonably consider necessary to establish that your System satisfies the requirements notified by us to you from time to time;
  - (c) carry out virus checks on a regular basis;
  - (d) inform us immediately of any unauthorised access to such Electronic Service or any unauthorised Transaction or instruction which you know of or suspect and, if within your control, cause such unauthorised use to cease; and
  - (e) not at any time leave the terminal from which you have accessed such Electronic Service or let anyone else use the terminal until you have logged off such Electronic Service.
- 6.8 **System defects:** In the event you become aware of a material defect, malfunction or virus in the System or in an Electronic Service, you will immediately notify us of such defect, malfunction or virus and cease all use of such Electronic Service until you have received permission from us to resume use.
- 6.9 **Intellectual Property:** All rights in patents, copyrights, design rights, trade marks and any other intellectual property rights (whether registered or unregistered) relating to the Electronic Services remain vested in us or our licensors. You will not copy, interfere with, tamper with, alter, amend or modify the Electronic Services or any part or parts thereof unless expressly permitted by us in writing; reverse compile or disassemble the Electronic Services; nor purport to do any of the same or permit any of the same to be done, except in so far as such acts are expressly permitted by law. Any copies of the Electronic Services made in accordance with law are subject to the terms and conditions of this Agreement. You shall ensure that all the licensors' trademarks and copyright and restricted rights notices are reproduced on these copies. You shall maintain an up-to-date written record of the number of copies of the Electronic Services made by you. If we so request, you shall as soon as reasonably practical, provide to us a statement of the number and whereabouts of copies of the Electronic Services. In the event that you receive any data, information or software via an Electronic Service other than that which you are entitled to receive pursuant to this Agreement, you will immediately notify us and will not use, in any way whatsoever, such data, information or software.

#### 6.10 ***Liability And Indemnity:***

Without prejudice to any other terms of this Agreement, relating to the limitation of liability and provision of indemnities, the following clauses shall apply to our Electronic Services.

- (a) ***System errors:*** We shall have no liability to you for damage which you may suffer as a result of transmission errors, technical faults, malfunctions, illegal intervention in network equipment, network overloads, malicious blocking of access by third parties, internet malfunctions, interruptions or other deficiencies on the part of internet service providers. You will be responsible for all orders entered on your behalf via the Electronic Services and you will be fully liable to us for the settlement of any Transaction arising from them. You acknowledge that access to Electronic Services may be limited or unavailable due to such system errors, and that we reserve the right upon notice to suspend access to Electronic Services for this reason.
- (b) ***Delays:*** Neither we nor any third party software provider accept any liability in respect of any delays, inaccuracies, errors or omissions in any data provided to you in connection with an Electronic Service. For the avoidance of doubt, Electronic Services may not be provided on a continuous basis and neither we nor any third party provider accept any liability in this respect.
- (c) ***Viruses from an Electronic Service:*** We shall have no liability to you (whether in contract or in tort, including negligence) in the event that any viruses, worms, software bombs or similar items are introduced into your System via an Electronic Service or any software provided by us to you in order to enable you to use such Electronic Service, provided that we have taken reasonable steps to prevent any such introduction.
- (d) ***Viruses from your System:*** You will ensure that no computer viruses, worms, software bombs or similar items are introduced into our computer system or network and you will indemnify us on demand for any loss that we suffer arising as a result of any such introduction.
- (e) ***Unauthorised use:*** We shall not be liable for any loss, liability or cost whatsoever arising from any unauthorised use of the Electronic Service. You shall on demand indemnify, protect and hold us harmless from and against all losses, liabilities, judgements, suits, actions, proceedings, claims, damages and costs resulting from or arising out of any act or omission by any person using an Electronic Service by using your designated passwords, whether or not you authorised such use.
- (f) ***Markets:*** We shall not be liable for any act taken by or on the instruction of a Market, clearing house or regulatory body.

6.11 ***Suspension or permanent withdrawal with notice:*** We may suspend or permanently withdraw an Electronic Service, by giving you 10 days' written notice.

6.12 ***Immediate suspension or permanent withdrawal:*** We have the right, unilaterally and with immediate effect, to suspend or withdraw permanently your ability to use any

Electronic Service, or any part thereof, without notice, where we consider it necessary or advisable to do so, in our discretion and in good faith, for example due to your non-compliance with the Applicable Regulations, breach of any provisions of this Agreement, on the occurrence of an Event of Default, network problems, failure of power supply, for maintenance, or to protect you when there has been a breach of security or for other reasons (including reasons not related to electronic trading and/or use of the Electronic Services). In addition, the use of an Electronic Service may be terminated automatically, upon the termination (for whatever reason) of (i) any licence granted to us which relates to the Electronic Service; or (ii) this Agreement. The use of an Electronic Service may be terminated immediately if an Electronic Service is withdrawn by any Market or we are required to withdraw the facility to comply with Applicable Regulations.

- 6.13 **Effects of termination:** In the event of a termination of the use of an Electronic Service for any reason, upon request by us, you shall, at our option, return to us or destroy all hardware, software and documentation we may have provided you in connection with such Electronic Service and any copies thereof.

## **MODULE F - CLIENT MONEY**

### **7. CLIENT MONEY; TITLE TRANSFER OF CASH**

- 7.1 If we receive money from you, or money is received by us on your behalf, for the purpose of Futures and Options and Other Investment Business, this money will be held by us for you subject to the general Client Money Rules and in accordance with clauses 7.3 to 7.14 of this Agreement. If you transfer money to us, or money is paid to us on your behalf, for the purpose of Foreign Exchange and Precious Metals Business, such money will not be held by us pursuant to the Client Money Rules, and clauses 7.15 to 7.17 will apply instead of clauses 7.3 to 7.14.
- 7.2 If some of your money is held by us for you pursuant to the Client Money Rules, and we also receive money from you for the purpose of Foreign Exchange and Precious Metals Business, any money which we hold for you as client money may only be transferred by us in accordance with the Client Money Rules, and we may only transfer your client money into our own account by way of title transfer from you to us upon your explicit instruction, using one of the accepted methods of communication set out in this Agreement. However, you authorise us to repay to you any amount you have transferred to us pursuant to clause 7.16 which is owed by us to you by payment of the relevant amount to a client money account maintained by us in accordance with the Client Money Rules, at any time at our entire discretion.

### **7.3 FUTURES AND OPTIONS AND OTHER INVESTMENT BUSINESS**

- 7.4 **Client money:** We treat money received from you or held by us on your behalf in accordance with the Client Money Rules.

- 7.5 **Deposit with appropriate bank and passing money to other third parties:** Subject to the following provisions, we will deposit money received from you with a bank as permitted by the Client Money Rules. We may also allow another third party (for example, a market, intermediate broker, OTC counterparty or clearing house) to hold client money in order to effect one or more Transactions constituting Futures and

Options and Other Investment Business through or with that person or to satisfy your obligation to provide collateral in respect of a Transaction constituting Futures and Options and Other Investment Business. We have no responsibility for any acts or omissions of any third party to whom we pass money received from you. The third party to whom we pass money may hold it in an omnibus account. You agree and acknowledge that where we allow a third party to hold client money, this may involve a transfer of full ownership of the money to that third party, in which case you will no longer have a proprietary claim to such money and the transferee may deal with it in its own right. In the event of the insolvency or any other analogous proceedings in relation to that third party, we will only have an unsecured claim against the third party on behalf of you and our other clients, and you will be exposed to the risk that the money received by us from the third party is insufficient to satisfy the claims of you and all other clients with claims in respect of the relevant account.

7.6 ***Placing money in a qualifying money market fund:*** We may place money received from you in a qualifying money market fund, as defined in the Client Money Rules. As a result, any money will not be held in accordance with the Client Money Rules and the units in the relevant fund will be held for you as Custody Assets in accordance with the Custody Rules. Please let us know if you do not wish your money to be placed in a qualifying money market fund.

7.7 ***DVP exemption:*** You agree that money will not be treated as client money in respect of any delivery versus payment transactions that we settle through a Commercial Settlement System (in our capacity as a direct member or participant of such Commercial Settlement System or where we are sponsored by such a direct member or participant), if:

(a) in respect of a purchase, we intend the money from you to be due to us within one business day following the fulfilment of our delivery obligation to you; or

(b) in respect of a sale, we intend the money in question to be due to you within one business day following the fulfilment of your delivery obligation to us,

(the “**DVP exemption**”), provided that we will stop using the DVP exemption in respect of any particular transaction if the relevant payment or delivery by us to you has not occurred by the close of business on the third business day following the date on which we make use of the DVP exemption in respect of that transaction.

7.8 ***Interest:*** We shall not pay you interest, nor account to you for profits earned, on client money.

7.9 ***Overseas banks, intermediate broker, settlement agent or OTC counterparty:*** We may hold client money on your behalf outside the EEA. The legal and regulatory regime applying to any such bank or person will be different from that of the United Kingdom and in the event of the insolvency or any other analogous proceedings in relation to that bank or person, your money may be treated differently from the treatment which would apply if the money was held with a bank in an account in the United Kingdom. We will not be liable for the insolvency, acts or omissions of any third party referred to in this sub-clause.

- 7.10 **Depository's lien:** We may deposit your money with a depository who may have a security interest, lien or right of set-off in relation to that money in certain circumstances.
- 7.11 **Right of application of client money:** Notwithstanding any other terms of this Agreement, where any obligations owing to us from you (whether these are obligations in connection with Futures and Options and Other Investment Business, or otherwise) are due and payable to us, we may cease to treat as client money so much of the money held on your behalf as equals the amount of those obligations in accordance with the Client Money Rules. You agree that we may apply that money in or towards satisfaction of all or part of those obligations due and payable to us. For the purposes of these client money terms, any such obligations become immediately due and payable, without notice or demand by us, when incurred by you or on your behalf.
- 7.12 **Additional security:** As a continuing security for the payment and discharge of the Secured Obligations you grant to us, with full title guarantee, a first fixed security interest in all right or interest you may have to any of your money that we may cease to treat as client money in accordance with the Client Money Rules. You agree that we shall be entitled to apply that money in or towards satisfaction of all or any part of the Secured Obligations which are due and payable to us but unpaid.
- 7.13 **Unclaimed client money:** You agree that we may, in our sole discretion, decide to pay away to a registered charity of our choice any money that we hold for you as client money if there has been no movement on your balance for six years (notwithstanding any payments or receipts of charges, interest or similar items) and we have been unable to contact you having taken reasonable steps in accordance with the Client Money Rules to trace you and return the money, in which case we shall cease to treat such money as client money. In such circumstances, we (or a member of our group) will unconditionally undertake to pay you a sum equal to the relevant client money balance paid away in the event that you seek to claim the client money balance in future.
- 7.14 **Transfer of business:** Except in respect of de minimis sums transferred in accordance with the Client Money Rules (where your consent is not required), you agree that we may transfer to another person, as part of a transfer of business to that person, client money balances, provided that:
- (a) the sums transferred will be held for you by the person to whom they are transferred in accordance with the Client Money Rules; or
  - (b) if not held in accordance with (a), we will exercise all due skill, care and diligence in assessing whether the person to whom the client money is transferred will apply adequate measures to protect these sums.

For the purposes of this clause, de minimis sums shall mean £100 or less.

## 7.15 FOREIGN EXCHANGE AND PRECIOUS METALS BUSINESS

- 7.16 **Client money:** When you transfer money to us, or money is paid to us on your behalf, you agree that the full ownership of the money is transferred to us:
- (a) for the purpose of securing or otherwise covering your Obligations in relation to Foreign Exchange and Precious Metals Business;
  - (b) and unless you have notified us in writing to the contrary, we will not hold such money in accordance with the Client Money Rules but as cash margin as provided in this Agreement.
- 7.17 Money received by us from you or a third party in this way for your account will be owed by us to you, even where we are acting as your agent. Accordingly the Client Money Rules will not apply, and you will not have a proprietary claim over such money, and we can deal with it as our own. Money transferred to us will be recorded by us as a cash repayment obligation owed by us to you. We will transfer an equivalent amount of money back to you where, in our discretion, we consider that the amount of money you have transferred to us is more than is necessary to cover your Obligations to us in relation to Foreign Exchange and Precious Metals Business. In determining the amount of collateral and the amounts of cash margin, your Obligations in relation to Foreign Exchange and Precious Metals Business, and our obligations to you, we may apply such methodology (including judgements as to the future movement of markets and values) as we consider appropriate, consistent with Applicable Regulations.

## MODULE G- MARGIN AND COLLATERAL

### 8. MARGINING ARRANGEMENTS

- 8.1 **Margin call:** You agree to pay us on demand such sums by way of margin as are required from time to time under the Rules of any relevant Market (if applicable) or as we may in our discretion reasonably require for the purpose of protecting ourselves against loss or risk of loss on present, future or contemplated Transactions under this Agreement.
- 8.2 **Form of margin:** Unless otherwise agreed, margin must be paid in cash. The currency of the cash margin you pay to us shall be the currency of the relevant underlying Transaction (if applicable), although we may in our discretion decide to accept payments of cash margin in other currencies from time to time.
- 8.3 **Right of Retention:** If there is an Event of Default or this Agreement terminates, notwithstanding the terms of clause 7.17 we will not be obliged to repay any cash margin paid to us pursuant to clause 7.16 for so long as it is required under the Rules of any relevant Market or to the extent that you owe, or may owe, Obligations to us. In determining the amounts of cash margin, your Obligations, and our obligations to you, we may apply such methodology (including judgements as to the future movement of markets and values) as we consider appropriate, consistent with Applicable Regulations.

- 8.4 ***Set-off upon default or termination:*** If there is an Event of Default or this Agreement terminates, we may set off the balance of cash margin owed by us to you against your Obligations (as reasonably valued by us) as they become due and payable to us and we shall be obliged to pay to you (or entitled to claim from you, as appropriate) only the net balance after all Obligations have been taken into account. The net balance, if any, shall take into account the Liquidation Amount payable under the Netting Module of this Agreement.
- 8.5 ***Negative pledge:*** You undertake neither to create nor to have outstanding any security interest whatsoever over, nor to agree to assign or transfer, any of the cash or non-cash margin transferred to us, except a lien routinely imposed on all securities in a clearing system in which such securities may be held.
- 8.6 ***Non-cash margin:*** Where we agree to accept non-cash collateral, it must be in a form acceptable to us. The value of the non-cash collateral and the proportion of that value to be taken into account for margin purposes shall be determined by us in our absolute discretion.
- 8.7 ***Security interest:*** As a continuing security for the performance of the Secured Obligations under or pursuant to this Agreement, you grant to us, with full title guarantee, a first fixed security interest in all non-cash margin now or in the future provided by you to us or to our order or under our direction or control or that of a Market or otherwise standing to the credit of your account under this Agreement or otherwise held by us or our Associates or our nominees on your behalf.
- 8.8 ***Further assurance:*** You agree to execute such further documents and to take such further steps as we may reasonably require to perfect our security interest over, be registered as owner of or obtain legal title to the margin, secure further the Secured Obligations, enable us to exercise our rights or to satisfy any market requirement.
- 8.9 ***Substitution:*** You may not withdraw or substitute any property subject to our security interest without our consent.
- 8.10 ***Power to charge:*** You agree that we may, to the extent that any of the margin constitutes "financial collateral" and this Agreement and your obligations hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the "**Regulations**")), free of any adverse interest of yours or any other person, grant a first-ranking security interest over margin provided by you to cover any of our obligations to an intermediate broker or Market, including obligations owed by virtue of the positions held by us or other of our clients.
- 8.11 ***Power of sale:*** If an Event of Default occurs, we may exercise the power to sell all or any part of the margin. The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Agreement or to any exercise by us of our rights to consolidate mortgages or our power of sale. We shall be entitled to apply the proceeds of sale or other disposal in paying the costs of such sale or other disposal and in or towards satisfaction of the Secured Obligations.
- 8.12 ***Power of appropriation:*** To the extent that any of the margin constitutes "financial collateral" and this Agreement and your obligations hereunder constitute a "security

financial collateral arrangement" under the Regulations, we shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations. For this purpose, you agree that the value of such financial collateral so appropriated shall be the amount of the margin, together with any accrued but unposted interest, at the time the right of appropriation is exercised. The parties further agree that the method of valuation provided for in this Agreement shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

- 8.13 **Rehypothecation:** You agree and authorise us to borrow, lend, appropriate, dispose of or otherwise use for our own purposes, from time to time, all non-cash margin accepted by us from you and, to the extent that we do, we both acknowledge that the relevant non-cash margin will be transferred to a proprietary account belonging to us (or to any other account selected by us from time to time) by way of absolute transfer and such margin will become the absolute property of ours (or that of our transferee) free from any security interest under this Agreement and from any equity, right, title or interest of yours. Upon any such rehypothecation by us you will have a right against us for the delivery of property, cash, or securities of an identical type, nominal value, description and amount to the rehypothecated non-cash margin, which, upon being delivered back to you, will become subject to the provisions of this Agreement. We agree to credit to you, as soon as reasonably practicable following receipt by us, and as applicable, a sum of money or property equivalent to (and in the same currency as) the type and amount of income (including interest, dividends or other distributions whatsoever with respect to the non-cash margin) that would be received by you in respect of such non-cash margin assuming that such non-cash margin was not rehypothecated by us and was retained by you on the date on which such income was paid.
- 8.14 **Lien:** In addition and without prejudice to any rights to which we may be entitled under this Agreement or any Applicable Regulations, we shall have a general lien on all property held by us or our Associates or our nominees on your behalf until the satisfaction of the Secured Obligations.

## MODULE H - REPRESENTATIONS

### 9. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 9.1 **Representations and warranties:** You represent and warrant to us on the date this Agreement comes into effect and as of the date of each Transaction that:
- (a) If you are an individual, you have reached the age of 18 years or over and have full capacity to enter into this Agreement;
  - (b) you have all necessary authority, powers, consents, licences and authorisations and have taken all necessary action to enable you lawfully to enter into and perform this Agreement and each Transaction and to grant the security interests and powers referred to in this Agreement;
  - (c) the persons entering into this Agreement and each Transaction on your behalf have been duly authorised to do so;

- (d) this Agreement, each Transaction and the obligations created under them both are binding upon you and enforceable against you in accordance with their terms (subject to applicable principles of equity) and do not and will not violate the terms of any regulation, order, charge or agreement by which you are bound;
- (e) you enter into this Agreement for commercial purposes;
- (f) you act as principal and sole beneficial owner (but not as trustee) in entering into this Agreement and each Transaction;
- (g) any information which you provide or have provided to us in respect of your financial position, domicile or other matters is accurate and not misleading in any material respect;
- (h) you are willing and financially able to sustain a total loss of funds resulting from Transactions and trading in such Transactions is a suitable investment vehicle for you; and
- (i) except as otherwise agreed by us, you are the sole beneficial owner of all margin you transfer under this Agreement, free and clear of any security interest whatsoever other than a lien routinely imposed on all securities in a clearing system in which such securities may be held.

9.2 **Covenants:** You covenant to us that:

- (a) you will at all times obtain and comply, and do all that is necessary to maintain in full force and effect, all authority, powers, consents, licences and authorisations referred to in this clause;
- (b) you are willing and able, upon request, to provide us with information in respect of your financial position, domicile or other matters;
- (c) you will promptly notify us of the occurrence of any Event of Default or of any event that may become an Event of Default with respect to yourself or any Credit Support Provider;
- (d) you will (i) comply with all Applicable Regulations in relation to this Agreement and any Transaction, so far as they are applicable to you; and (ii) use all reasonable steps to comply with all Applicable Regulations in relation to this Agreement and each Transaction, where such Applicable Regulations do not apply to you but your cooperation is needed to help us comply with our obligations;
- (e) you will not send orders or otherwise take any action that could create a false impression of the demand or value for a security, or send orders which you have reason to believe are in breach of Applicable Regulations. You shall observe the standard of behaviour reasonably expected of persons in your position and not take any step which would cause us to fail to observe the standard of behaviour reasonably expected of persons in our position; and

- (f) upon demand, you will provide us with such information as we may reasonably require to evidence the matters referred to in this clause or to comply with any Applicable Regulations.

## **MODULE I - DEFAULT, NETTING AND TERMINATION**

### **10. EVENTS OF DEFAULT**

10.1 *Events of Default:* The following shall constitute Events of Default:

- (a) you fail to make any payment when due under this Agreement or to make or take delivery of any property when due under, or to observe or perform any other provision of this Agreement;
- (b) you commence a voluntary case or other procedure seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent), or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian or other similar official (each a "**Custodian**") of you or any substantial part of your assets, or if you take any corporate action to authorise any of the foregoing, and in the case of a reorganisation, arrangement or composition, we do not consent to the proposals;
- (c) an involuntary case or other procedure is commenced against you seeking or proposing liquidation, reorganisation, an arrangement or composition, a freeze or moratorium, or other similar relief with respect to you or your debts under any bankruptcy, insolvency, regulatory, supervisory or similar law (including any corporate or other law with potential application to you, if insolvent) or seeking the appointment of a Custodian of you or any substantial part of your assets and such involuntary case or other procedure either (a) has not been dismissed within five days of its institution or presentation or (b) has been dismissed within such period but solely on the grounds of an insufficiency of assets to cover the costs of such case or other procedure;
- (d) you die, become of unsound mind, are unable to pay your debts as they fall due or are bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to you; or any indebtedness of yours is not paid on the due date therefore, or becomes capable at any time of being declared due and payable under agreements or instruments evidencing such indebtedness before it would otherwise have been due and payable, or any suit, action or other proceedings relating to this Agreement are commenced for any execution, any attachment or garnishment, or distress against, or an encumbrance takes possession of the whole or any part of your property, undertaking or assets (tangible and intangible);
- (e) you or any Credit Support Provider (or any Custodian acting on behalf of either of you or a Credit Support Provider) disaffirms, disclaims or repudiates any obligation under this Agreement or any guarantee, hypothecation agreement, margin or security agreement or document, or any other document

containing an obligation of a third party ("**Credit Support Provider**"), or of you, in favour of us supporting any of your obligations under this Agreement (each a "**Credit Support Document**");

- (f) any representation or warranty made or given or deemed made or given by you under this Agreement or any Credit Support Document proves to have been false or misleading in any material respect as at the time it was made or given or deemed made or given;
- (g) (i) any Credit Support Provider fails, or you yourself fail to comply with or perform any agreement or obligation to be complied with or performed by you or it in accordance with the applicable Credit Support Document; (ii) any Credit Support Document expires or ceases to be in full force and effect prior to the satisfaction of all your obligations under this Agreement, unless we have agreed in writing that this shall not be an Event of Default; (iii) any representation or warranty made or given or deemed made or given by any Credit Support Provider pursuant to any Credit Support Document proves to have been false or misleading in any material respect as at the time it was made or given or deemed made or given; or (iv) any event referred to in paragraphs (b) to (d) or (h) of this sub-clause occurs in respect of any Credit Support Provider;
- (h) you are dissolved, or, if your capacity or existence is dependent upon a record in a formal register, the registration is removed or ends, or any procedure is commenced seeking or proposing your dissolution, removal from such a register, or the ending of such a registration;
- (i) where you or your Credit Support Provider is a partnership, any of the events referred to in paragraphs (b) to (d) or (h) of sub-clause 1 of this clause occurs in respect of one or more of your or its partners;
- (j) we consider it necessary or desirable to prevent what we consider is or might be a violation of any Applicable Regulation or good standard of market practice;
- (k) we consider it necessary or desirable for our own protection or any action is taken or event occurs which we consider might have a material adverse effect upon your ability to perform any of your obligations under this Agreement;
- (l) any event of default (however described) occurs in relation to you under any other agreement between us] [which you are a party to] [or any other event specified for these purposes in the Individually Agreed Terms Schedule or otherwise occurs.]]

## 11. NETTING

- 11.1 ***Rights on Default:*** On the occurrence of an Event of Default, we may exercise our rights under this clause, except that , if so specified by us in the Individually Agreed Terms Schedule attached to these Terms of Business or otherwise, in the case of the occurrence of any Event of Default specified in paragraphs (b) or (c) of the definition

of Events of Default (each a "**Bankruptcy Default**"), the automatic termination provision of this clause shall apply.

- 11.2 **Liquidation Date:** Subject to the following sub-clause, at any time following the occurrence of an Event of Default, we may, by notice to you, specify a date (the "**Liquidation Date**") for the termination and liquidation of Transactions in accordance with this clause.
- 11.3 **Automatic termination:** Where so specified in the Individually Agreed Terms Schedule, the date of the occurrence of any Bankruptcy Default shall automatically constitute a Liquidation Date, without the need for any notice by us and the provisions of the following sub-clauses shall then apply.
- 11.4 **Calculation of Liquidation Amount:** Upon the occurrence of a Liquidation Date:
- (a) neither of us shall be obliged to make any further payments or deliveries under any Netting Transactions which would, but for this clause, have fallen due for performance on or after the Liquidation Date and such obligations shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Liquidation Amount;
  - (b) we shall (on, or as soon as reasonably practicable after, the Liquidation Date) determine (discounting if appropriate), in respect of each Netting Transaction referred to in paragraph (a), the total cost, loss or, as the case may be, gain, in each case expressed in the Base Currency specified by us as such in the Individually Agreed Terms Schedule or otherwise in writing or, failing any such specification, the lawful Currency of the United Kingdom (and, if appropriate, including any loss of bargain, cost of funding or, without duplication, cost, loss or, as the case may be, gain, as a result of the termination, liquidation, obtaining, performing or re-establishing of any hedge or related trading position) as a result of the termination, pursuant to this Agreement, of each payment or delivery which would otherwise have been required to be made under such Netting Transaction (assuming satisfaction of each applicable condition precedent and having due regard, if appropriate, to such market quotations published on, or official settlement prices set by the relevant Market as may be available on, or immediately preceding, the date of calculation); and
  - (c) we shall treat each cost or loss to us, determined as above, as a positive amount and each gain by us, so determined, as a negative amount and aggregate all of such amounts to produce a single, net positive or negative amount, denominated in the Base Currency (the "**Liquidation Amount**").
- 11.5 **Payer:** If the Liquidation Amount determined pursuant to this clause is a positive amount, you shall pay it to us and if it is a negative amount, we shall pay it to you. We shall notify you of the Liquidation Amount, and by whom it is payable, immediately after the calculation of such amount.
- 11.6 **Other transactions:** Where termination and liquidation occurs in accordance with this clause, we shall also be entitled, at our discretion, to terminate and liquidate, in

accordance with the provisions of this clause, any other transactions entered into between us which are then outstanding.

- 11.7 **Payment:** Unless a Liquidation Date has occurred or has been effectively set, we shall not be obliged to make any payment or delivery scheduled to be made by us under a Netting Transaction for as long as an Event of Default or any event which may become (with the passage of time, the giving of notice, the making of any determination hereunder, or any combination thereof) an Event of Default with respect to you has occurred and is continuing.
- 11.8 **Additional rights:** Our rights under this clause shall be in addition to, and not in limitation or exclusion of, any other rights which we may have (whether by agreement, operation of law or otherwise).
- 11.9 **Application of netting to Netting Transactions:** Subject to the Individually Agreed Terms Schedule, this clause applies to each Netting Transaction entered into or outstanding between us on or after the date this Agreement takes effect.
- 11.10 **Single agreement:** This Agreement, the particular terms applicable to each Netting Transaction, and all amendments to any of them shall together constitute a single agreement between us. We both acknowledge that all Netting Transactions entered into on or after the date this Agreement takes effect are entered into in reliance upon the fact that the Agreement and all such terms constitute a single agreement between us.
- 11.11 **Other agreements:** The provisions of this clause shall not apply to any Transaction which is subject to liquidation and termination under another agreement. However, any sum resulting from a liquidation and termination under another agreement, may be set-off against the Liquidation Amount.

## 12. RIGHTS ON DEFAULT

- 12.1 **Default:** On an Event of Default or at any time after we have determined, in our absolute discretion, that you have not performed (or we reasonably believe that you will not be able or willing in the future to perform) any of your obligations to us, in addition to any rights under the Netting Clause, we shall be entitled without prior notice to you:
- (a) instead of returning to you investments equivalent to those credited to your account, to pay to you the fair market value of such investments at the time we exercise such right, and/or
  - (b) to sell such of your investments as are in our possession or in the possession of any nominee or third party appointed under or pursuant to this Agreement, in each case as we may in our absolute discretion select or and upon such terms as we may in our absolute discretion think fit (without being responsible for any loss or diminution in price) in order to realise funds sufficient to cover any amount due by you hereunder, and/or
  - (c) to close out, replace or reverse any Transaction, buy, sell, borrow or lend or enter into any other Transaction or take, or refrain from taking, such other

action at such time or times and in such manner as, at our sole discretion, we consider necessary or appropriate to cover, reduce or eliminate our loss or liability under or in respect of any of your contracts, positions or commitments, and/or

(d) to terminate this Agreement immediately.

### 13. **TERMINATION WITHOUT DEFAULT**

13.1 **Termination:** Unless required by Applicable Regulations, either party may terminate this Agreement (and the relationship between us) by giving ten days written notice of termination to the other.

Upon terminating this Agreement, all amounts payable by you to us will become immediately due and payable including (but without limitation):

- (a) all outstanding fees, charges and commissions; and
- (b) any dealing expenses incurred by terminating this Agreement; and
- (c) any losses and expenses realised in closing out any transactions or settling or concluding outstanding obligations incurred by us on your behalf.

## MODULE J - INDEMNITIES AND LIMITATION OF LIABILITY

### 14. **EXCLUSIONS, LIMITATIONS AND INDEMNITY**

14.1 **General Exclusion:** Neither we nor our directors, officers, employees, or agents shall be liable for any losses, damages, costs or expenses, whether arising out of negligence, breach of contract, misrepresentation or otherwise, incurred or suffered by you under this Agreement (including any Transaction or where we have declined to enter into a proposed Transaction) unless such loss is a reasonably foreseeable consequence and arises directly from our or their respective gross negligence, wilful default or fraud. In no circumstance, shall we have liability for losses suffered by you or any third party for any special or consequential damage, loss of profits, loss of goodwill or loss of business opportunity arising under or in connection with this Agreement, whether arising out of negligence, breach of contract, misrepresentation or otherwise. Nothing in this Agreement will limit our liability for death or personal injury resulting from our negligence.

14.2 **Adverse implications of Transactions:** Without limitation, we do not accept liability for any adverse tax, accounting or other implications of any Transaction whatsoever.

14.3 **Changes in the market:** Without limitation, we do not accept any liability by reason of any delay or change in market conditions before any particular Transaction is effected.

14.4 **Limitation of Liability:** We shall not be liable to you for any partial or non-performance of our obligations hereunder by reason of any cause beyond our reasonable control, including without limitation any breakdown, delay, malfunction or failure of transmission, communication or computer facilities, industrial action, act of terrorism, act of God, acts and regulations of any governmental or supra national

bodies or authorities or the failure by the relevant intermediate broker or agent, agent or principal of our custodian, sub-custodian, dealer, Market, clearing house or regulatory or self-regulatory organisation, for any reason, to perform its obligations. Nothing in this Agreement will exclude or restrict any duty or liability we may have to you under the regulatory system (as defined in the FCA Rules), which may not be excluded or restricted thereunder.

- 14.5 **Entire Agreement:** You acknowledge that you have not relied on or been induced to enter into this Agreement by a representation other than those expressly set out in this Agreement. We will not be liable to you (in equity, contract or tort under the Misrepresentation Act 1967) for a representation that is not set out in this Agreement and that is not fraudulent.
- 14.6 **Indemnity:** You shall pay to us such sums as we may from time to time require in or towards satisfaction of any debit balance on any of your accounts with us and, on a full indemnity basis, any losses, liabilities, costs or expenses (including legal fees), taxes, imposts and levies which we may incur or be subjected to with respect to any of your accounts or any Transaction or any matching Transaction on a Market or with an intermediate broker or as a result of any misrepresentation by you or any violation by you of your obligations under this Agreement (including any Transaction) or by the enforcement of our rights.

## MODULE K - MISCELLANEOUS AND GOVERNING LAW

### 15. MISCELLANEOUS

- 15.1 **Amendments:** We have the right to amend the terms of this Agreement. If we make any change to this Agreement, we will give at least ten Business Days written notice to you. Such amendment will become effective on the date specified in the notice. Unless otherwise agreed, an amendment will not affect any outstanding order or Transaction or any legal rights or obligations which may already have arisen.
- 15.2 **Surviving Terms:** Outstanding rights and obligations (in particular relating to the Netting Module, the Indemnities and Limitation of Liability Module and the Miscellaneous and Governing Law Module) and Transactions shall survive the termination of this Agreement, and shall continue to be governed by its provisions and the particular clauses agreed between us in relation to such Transactions until all obligations have been fully performed.
- 15.3 **Notices:** Unless otherwise agreed, all notices, instructions and other communications to be given by us under this Agreement shall be given to the address or fax number provided by you to us. Likewise, all notices, instructions and other communications to be given by you under this Agreement shall be given to the address or fax number (in the Individually Agreed Terms Schedule) and/or by notice in writing by either party. You will notify us of any change of your address in accordance with this clause.
- 15.4 **Electronic Communications:** Subject to Applicable Regulations, any communication between us using electronic signatures shall be binding as if it were in writing. Orders or instructions given to you via e-mail or other electronic means will constitute evidence of the orders or instructions given.

- 15.5 **Recording of calls:** If you give instructions by telephone, your conversation will be recorded. We may record telephone conversations without use of a warning tone to ensure that the material terms of the Transaction, and any other material information relating to the Transaction is promptly and accurately recorded. Such records will be our sole property and accepted by you as evidence of the orders or instructions given.
- 15.6 **Our records:** Our records, unless shown to be wrong, will be evidence of your dealings with us in connection with our services. You will not object to the admission of our records as evidence in any legal proceedings because such records are not originals, are not in writing or are documents produced by a computer. You will not rely on us to comply with your record keeping obligations, although records may be made available to you on request at our absolute discretion.
- 15.7 **Your records:** You agree to keep adequate records in accordance with Applicable Regulations to demonstrate the nature of orders submitted and the time at which such orders are submitted.
- 15.8 **Investor Protection Schemes:** We are a member of the Financial Services Compensation Scheme (the "**Scheme**") in the United Kingdom. The Scheme is only available to certain types of claimants and claims. Payments to eligible claimants under the Scheme will vary depending on the type of protected claim (for example deposits or investments) the claimants hold with respect to the relevant institution. Payments under the Scheme in respect of investments are subject to a maximum payment to any eligible investor of GBP 50,000. Payments under the Scheme in respect of deposits are subject to a maximum payment to any eligible depositor of GBP 75,000. Further details of the Scheme are available on request or at the Scheme's official website at [www.fscs.org.uk](http://www.fscs.org.uk).
- 15.9 **Third Party Rights:** This Agreement shall be for the benefit of and binding upon us both and our respective successors and assigns. You shall not assign, charge or otherwise transfer or purport to assign, charge or otherwise transfer your rights or obligations under this Agreement or any interest in this Agreement, without our prior written consent, and any purported assignment, charge or transfer in violation of this clause shall be void. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999.
- 15.10 **Time of essence:** Time shall be of the essence in respect of all obligations of yours under this Agreement (including any Transaction).
- 15.11 **Rights and remedies:** The rights and remedies provided under this Agreement are cumulative and not exclusive of those provided by law. We shall be under no obligation to exercise any right or remedy either at all or in a manner or at a time beneficial to you. No failure by us to exercise or delay by us in exercising any of our rights under this Agreement (including any Transaction) or otherwise shall operate as a waiver of those or any other rights or remedies. No single or partial exercise of a right or remedy shall prevent further exercise of that right or remedy or the exercise of another right or remedy.
- 15.12 **Complaints procedure:** We are obliged to put in place internal procedures for handling complaints fairly and promptly. You may submit a complaint to us, for example by letter, telephone, e-mail, or in person. We will send you a written

acknowledgement of your complaint promptly following receipt, enclosing details of our complaints procedures, including when and how you may be able to refer your complaint to the Financial Ombudsman Service. Please contact us if you would like further details regarding our complaints procedures.

- 15.13 **Set-off:** Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or contingent, present or future) owed by you to us against any amount (whether actual or contingent, present or future) owed by us to you. For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained.
- 15.14 **Partial invalidity:** If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.

## 16. GOVERNING LAW AND JURISDICTION

- 16.1 **Governing law:** A Transaction which is subject to the Rules of a Market shall be governed by the law applicable to it under those Rules. Subject thereto, this Agreement and all non-contractual obligations and other matters arising from it or in connection with it shall be governed by and construed in accordance with English law.
- 16.2 **Law applicable to relationship prior to the conclusion of the Agreement:** The law applicable to the relationship between us prior to the conclusion of this Agreement is English law.
- 16.3 **Arbitration:** Any dispute arising between us from or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligation arising out or in connection with this Agreement) shall be referred to and finally resolved by arbitration under the Arbitration Rules of the London Court of International Arbitration ("**LCIA**"). Any provisions of the Arbitration Rules of the LCIA relating to the nationality of an arbitrator shall, to that extent, not apply. The arbitral tribunal shall consist of three arbitrators. The seat of arbitration shall be London, England and the language of arbitration shall be English. For the purposes of arbitration each of the parties waives any right of application to determine a preliminary point of law or appeal on a point of law under Sections 45 and 69 of the Arbitration Act 1996.
- 16.4 **Jurisdiction:** Each of the parties irrevocably:
- (a) agrees for our benefit that the courts of England shall have jurisdiction to settle any suit, action or other proceedings relating to this Agreement ("**Proceedings**") and irrevocably submits to the jurisdiction of such courts (provided that this shall not prevent us from bringing an action in the courts of any other jurisdiction); and

- (b) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court and agrees not to claim that such Proceedings have been brought in an inconvenient forum or that such court does not have jurisdiction over it.

16.5 **Waiver of immunity and consent to enforcement:** You irrevocably waive to the fullest extent permitted by applicable law, with respect to yourself and your revenue and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any courts, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which you or your revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agree that you will not claim any immunity in any Proceedings. You consent generally in respect of any Proceedings to the giving of any relief or the issue of any process in connection with such Proceedings, including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such Proceedings.

16.6 **Service of process:** If you are situated outside England and Wales, process by which any Proceedings in England are begun may be served on you by being delivered to the address in England or Wales nominated by you for this purpose in the Individually Agreed Terms Schedule. This does not affect our right to serve process in another manner permitted by law.

## MODULE L - INTERPRETATION

### 17. INTERPRETATION

17.1 **Interpretation:** In this Agreement:

"**Applicable Regulations**" means:

- (a) FCA Rules or any other rules of a relevant regulatory authority;
- (b) the Rules of the relevant Market; and
- (c) all other applicable laws, rules, procedures, guidance and regulations (including, without limitation, accounting rules and anti-money laundering/sanctions legislation);

"**Associate**" means an undertaking in the same group as us, a representative whom we, or an undertaking in the same group as us, appoint, or any other person with whom we have a relationship that might reasonably be expected to give rise to a community of interest between us and them;

"**Business Day**" means a day which is not a Saturday or a Sunday and upon which banks are open for business in London;

"**Client Money Rules**" means CASS 7 of the FCA's Client Assets Sourcebook setting out the client money rules;

**"Client Money Distribution Rules"** means CASS 7A of the FCA's Client Assets Sourcebook setting out the client money distribution rules;

**"Commercial Settlement System"** means a system commercially available to firms that are members or participants, a purpose of which is to facilitate the settlement of transactions using money and/or assets held on one or more settlement accounts;

**"Credit Support Provider"** means any person who has entered into any guarantee, hypothecation, agreement, margin or security agreement in our favour in respect of your obligations under this Agreement;

**"Custody Rules"** means CASS 6 of the FCA's Client Assets Sourcebook setting out the custody rules;

**"Electronic Services"** means a service provided by us, for example an internet trading service offering clients access to information and trading facilities, via an internet service, a WAP service and/or an electronic order routing system;

**"Event of Default"** means any of the events of default as listed in paragraphs (a) to (l) of sub-clause 10.1 of the clause headed "Events of Default";

**"Foreign Exchange and Precious Metals Business"** means (a) the services provided by us to you under this Agreement of executing and clearing, or arranging, for you: (i) foreign exchange transactions; and/or (ii) transactions in Precious Metals; and (b) such other services as we may agree with you from time to time in relation to any such transactions, in each case together with services ancillary to such services;

**"Futures and Options and Other Investment Business"** means all services provided to you by us under this Agreement (including futures and options transactions, and other investment services we offer which are regulated by the FCA), other than Foreign Exchange and Precious Metals Business;

**"Market"** means any market listed in the Individually Agreed Terms Schedule;

**"Netting Transaction"** means a Transaction which is intended to be subject to the clause entitled "Netting" and for such purposes is identified as a "Netting Transaction" in the Individually Agreed Terms Schedule or by its own terms;

**"Obligations"** means obligations present or future, actual or contingent or prospective, owing or which may become owing by you to us under any Transaction (whether constituting Futures and Options and Other Investment Business or Foreign Exchange and Precious Metals Business) or designated by us for these purposes in writing (including in the Individually Agreed Terms Schedule);

**"Precious Metals"** means gold, silver and such other metal as we may agree with you from time to time;

**"Rules"** means articles, rules, regulations, procedures, guidance and customs, as in force from time to time;

**"Secured Obligations"** mean all Obligations owing by you to us after the application of any rights of set-off arising under this Agreement or by operation of law;

**"System"** means all computer hardware and software, equipment, network facilities and other resources and facilities needed to enable you to use an Electronic Service;

**"Transaction"** means any transaction subject to this Agreement, and includes:

- (i) a contract made on a Market or pursuant to the Rules of a Market;
- (ii) contract which is subject to the Rules of a Market;
- (iii) a contract which would (but for its term to maturity only) be a contract made on, or subject to the Rules of a Market and which, at the appropriate time, is to be submitted for clearing as a contract made on, or subject to the Rules of a Market;

in any of cases (i), (ii) and (iii) being a future, option, contract for differences, spot or forward contract of any kind in relation to any commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof;

- (iv) a transaction which is matched with any transaction within paragraph (i), (ii) or (iii) of this definition; or
- (v) any other transaction which we both agree, in any specific Module, the Individually Agreed Terms Schedule or otherwise, shall be a Transaction.

17.2 **General interpretation:** A reference in this Agreement to a "clause" or "Schedule" shall be construed as a reference to, respectively, a clause or Schedule of this Agreement, unless the context requires otherwise. References in this Agreement to any statute or statutory instrument or Applicable Regulations include any modification, amendment, extension or re-enactment thereof, as in force from time to time. A reference in this Agreement to "document" shall be construed to include any electronic document. The masculine includes the feminine and the neuter and the singular includes the plural and vice versa as the context admits or requires. Words and phrases defined in the FCA's Rules have the same meaning in this Agreement unless expressly defined in this Agreement.

17.3 **Schedules:** The clauses contained in the Schedule(s) (as amended from time to time) shall apply. We may from time to time send to you further Schedules in respect of Markets or Transactions. In the event of any conflict between the clauses of any Schedule and this Agreement, the clauses of the Schedule shall prevail. The fact that a clause is specifically included in a Schedule in respect of one Market or Transaction shall not preclude a similar clause being expressed or implied in relation to any other Market or Transaction.

17.4 **Headings:** Headings are for ease of reference only and do not form part of this Agreement.

## INDIVIDUALLY AGREED TERMS SCHEDULE

### 1. Transaction

1.1 Any order executed, whether OTC or exchange-traded, by us on your behalf shall be a Transaction for the purpose of paragraph (v) of the definition of "Transaction"

1.2 All Transactions shall be Netting Transactions and subject to termination and liquidation under the clause headed "Netting" following an Event of Default.

### 2. Markets

Each of the following shall be a Market for the purposes of this Agreement:

All Markets agreed between the Parties from time to time. For these purposes, unless the Parties agree to the contrary, a Market will be deemed to have been agreed between the Parties where an order is placed by you and accepted by us, or a Transaction is otherwise effected between us on that Market.

### 3. Automatic Termination

Upon the occurrence of a Bankruptcy Default, Automatic Termination shall apply.

### 4. Base Currency

GBP will be the base currency unless otherwise agreed between us.

### 5. Capacity

You will only contract with us in a principal capacity and you will accordingly be liable and remain liable to us on, and beneficially entitled to, each Transaction entered under this Agreement.

Where you notify us that you are acting as a Trustee or where you sign as Trustee or are de facto acting as a Trustee the Trustee Annex will apply.

Where you are undertaking Transactions that are cleared at an Authorised or Recognised CCP and we are acting as a direct clearing member of that CCP for you in accordance with European Markets Infrastructure Regulation ("EMIR") then the FIA Europe Clearing Module will apply.

### 6. Conditions on Payment

Our obligation to make payments on your behalf under this Agreement, whether acting as principal, agent or in any other capacity, is conditional upon receipt by us, on or before the due date (or reasonably satisfactory confirmation of such receipt by our settlement agents) of all necessary cleared funds, property and/or documents due to be paid or delivered by you in accordance with this Agreement.

7. Address for Notices and Service of Process

Our respective details for notices are as follows:

Our Details

Name: **Berkeley Futures Limited**  
Address: **18 Savile Row,  
London  
W1S 3PW, England**

Telephone No: **+44 (0)20 7758 4777**  
Fax No: **+44 (0)20 7287 5292**  
Contact Name: **Chris Thompson**

Your Details

Name:  
Address:

Telephone No:  
Fax No:  
Contact No:

8. Modules

In addition to the Annex and Module referred to in section 4 above the following Modules shall apply where you trade in any product covered by any of the Modules listed below:

2011 Futures and Options Module

2010 Foreign Exchange Module

2011 Metals and Soft Commodities Module

2011 Equities Module

2011 Fixed Income Securities module

2011 Custody module

## ACKNOWLEDGEMENTS SCHEDULE – INDIVIDUALS AND JOINT ACCOUNTS

If there is anything you wish to query, please contact us as soon as possible.

**You should complete this Schedule and read the Product Information Schedule. Please sign this Schedule and return one signed copy to us.**

You agree and acknowledge that we may execute an order on your behalf outside a Market.

You confirm that the information that you have provided to us to allow us to assess the suitability of each Transaction for you is accurate and complete.

You agree and acknowledge that in the case of a limit order in shares admitted to trading on a regulated market which are not immediately executed, we are not bound to facilitate the earliest possible execution of that order by making it public in an easily accessible manner.

You agree and acknowledge that we may enter into arrangements for securities financing transactions in respect of safe custody assets held by us on your behalf or otherwise use such safe custody assets for the account of another client.

You agree that we may enter into arrangements for securities financing transactions in respect of safe custody assets held by us on your behalf in an omnibus account held by a third party, or otherwise use safe custody assets held in such an account for the account of another client.

You agree that your safe custody assets may be recognised in our name.

You agree that we may deposit financial instruments held on your behalf with a third party in a third country that does not regulate the holding and safekeeping of financial instruments for the account of another person.

You agree and acknowledge that we may make use of the DVP exemption for client money, as described in clause 7.7 of Module F – Client Money; Title Transfer of Cash.

You agree and acknowledge that we may make use of the DVP exemption for Custody Assets, as described in clause 8.1 of the Custody Module.

All joint account holders must sign.

### A. Agreement

I/We have read, understood and agree to the clauses set out in this Professional Client Agreement version LON33336054/14 135867-0004. Where I/we sign in a representative capacity, I/we confirm that I/we have full power and authority to enter into this Agreement. Additionally, I have read and fully understood the product information disclosure schedule, set out on the firm's website at [www.bfl.co.uk](http://www.bfl.co.uk), in the event that they apply to my business activity with Berkeley Futures:

### INDIVIDUALS/JOINT ACCOUNT HOLDERS SIGN BELOW

(1) Signed (individual/joint account holder):

**Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

(2) Signed (individual/joint account holder):

**Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## ACKNOWLEDGEMENTS SCHEDULE – CORPORATE ACCOUNTS

If there is anything you wish to query, please contact us as soon as possible.

**You should complete this Schedule and read the Product Information Schedule. Please sign this Schedule and return one signed copy to us.**

You agree and acknowledge that we may execute an order on your behalf outside a Market.

You confirm that the information that you have provided to us to allow us to assess the suitability of each Transaction for you is accurate and complete.

You agree and acknowledge that in the case of a limit order in shares admitted to trading on a regulated market which are not immediately executed, we are not bound to facilitate the earliest possible execution of that order by making it public in an easily accessible manner.

You agree and acknowledge that we may enter into arrangements for securities financing transactions in respect of safe custody assets held by us on your behalf or otherwise use such safe custody assets for the account of another client.

You agree that we may enter into arrangements for securities financing transactions in respect of safe custody assets held by us on your behalf in an omnibus account held by a third party, or otherwise use safe custody assets held in such an account for the account of another client.

You agree that your safe custody assets may be recognised in our name.

You agree that we may deposit financial instruments held on your behalf with a third party in a third country that does not regulate the holding and safekeeping of financial instruments for the account of another person.

You agree and acknowledge that we may make use of the DVP exemption for client money, as described in clause 7.7 of Module F – Client Money; Title Transfer of Cash.

You agree and acknowledge that we may make use of the DVP exemption for Custody Assets, as described in clause 8.1 of the Custody Module.

A company should arrange for this Agreement to be executed by the company by two directors or a director and the company secretary.

### A. Agreement

I/We have read, understood and agree to the clauses set out in this Professional Client Agreement version LON33336054/14 135867-0004. Where I/we sign in a representative capacity, I/we confirm that I/we have full power and authority to enter into this Agreement. Additionally, I/we have read and fully understood the following product information disclosure module, set out on the firm's website at www.bfl.co.uk, in the event that they apply to my business activity with Berkeley Futures Limited:

### CORPORATE CUSTOMERS SIGN BELOW

(3) Executed by .....[company name]  
in the presence of:-

Signed:

Signed:

Name:

Name:

Director

Director/Secretary (**delete as appropriate**)

Date:

Date: